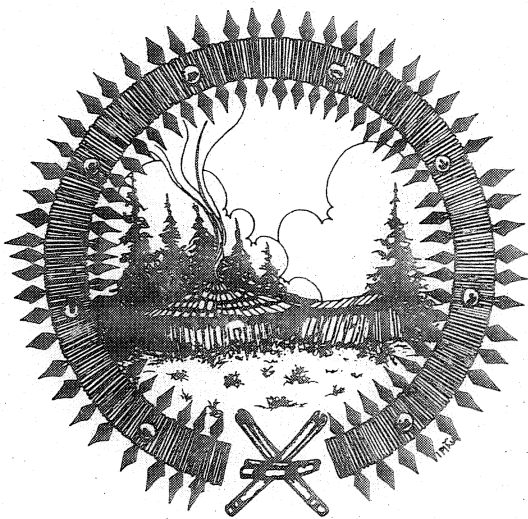


**Indian Child & Family  
Preservation Program**  
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INDIAN CHILD & FAMILY  
PRESERVATION PROGRAM



and the  
INDIAN CHILD WELFARE ACT

The Indian Child & Family Preservation Program is a consortium of five Mendocino County Pomo Indian tribes formed to provide Indian Child Welfare Act advocacy and a comprehensive array of other services. The program is funded by the Bureau of Indian Affairs.

In addition to ICWA advocacy, ICFPP:

- ◆ recruits Indian foster homes
- ◆ offers individual, marital & family counseling
- ◆ conducts supervised visitations
- ◆ transports children to clinical appointments
- ◆ advocates for Indian children in the schools
- ◆ researches enrollment eligibility
- ◆ provides family preservation assistance

ICFPP offices are located in Ukiah in close proximity to the Courthouse, Child Protective Services and other social service agencies



The Indian Child Welfare Act (ICWA) -- 25 U.S.C. §1912 *et seq.* was passed "...to protect the best interests of Indian children and promote the stability and security of Indian families and tribes." Prior to the passage of the Act, a shockingly large percentage of Indian children were removed from their family homes and placed in non-Indian settings, and this continues today. The Act established minimum federal standards for removing Indian children from their homes with the intent of stopping this cultural displacement.

To be covered under the ICWA, the child must be:

- ◆ unmarried and under 18
- ◆ a member of an Indian tribe or
- ◆ eligible for membership in an Indian tribe and
- ◆ the biological child of a member of an Indian tribe

- What Proceedings Are Covered by the ICWA?
- ◆ foster care placements
  - ◆ termination of parental rights
  - ◆ pre-adoptive placement in a home or institution after termination of parental rights
  - ◆ adoptive placement

- What Proceedings Are Not Covered?
- ◆ custody to one parent as part of a divorce
  - ◆ placement based on an act which would be a crime if committed by an adult
  - ◆ placements occurring before May 7, 1979

### When Does ICWA Apply?

When a child has been detained by the Child Protective Services division (CPS) of the Mendocino County Department of Social Services (on behalf of the State of California), an initial determination is made as to whether the child is an Indian. If such a determination is made, CPS must notify the parents or Indian custodian and the child's tribe of the pending proceedings and of their right to intervene. At court proceedings "clear and convincing evidence" must be produced before the court will order foster placement, including the testimony of qualified expert witnesses. "Evidence beyond a reasonable doubt" is needed, including expert witness testimony, to remove a child permanently from his/her parents. A "qualified expert witness" is one who has expertise beyond the normal social worker, specifically:

- ◆ tribal members knowledgeable in tribal family organization and child rearing
- ◆ lay experts with experience in Indian child and family services and social and cultural standards of the child's tribe
- ◆ professional person (e.g. therapist, teacher)

### Placement Preferences

Foster care and adoption preferences must follow a specified order. In foster/pre-adoptive placement the order of preference is:

- ◆ member of child's extended family
- ◆ foster home licensed/approved by child's tribe
- ◆ Indian foster home licensed/approved by CPS
- ◆ children's institution approved by the tribe or operated by an Indian organization



In adoptive placements, the order of placement is:

- ◆ member of child's extended family
- ◆ other members of child's tribe
- ◆ other Indian families

An Indian child may be placed in a non-Indian home only if a "diligent" search has failed to find an Indian home. The tribe may establish a different preference order by resolution, and this will be followed if it is the "least restrictive" placement. Where appropriate, the preference of the Indian child or parent shall be considered.

### Rights of Parents or Custodians

The rights of parents or custodians under the ICWA include:

- ◆ *Right to have an attorney appointed* at all stages of an involuntary placement proceeding if the parent or custodian cannot afford one.



- ◆ *Right to remedial services:* The court must be satisfied that active efforts have been made to provide rehabilitative services and programs designed to prevent the breakup of the Indian family through reunification. These services can include, but are not limited to, drug treatment, counseling, parenting classes and life skills education.
- ◆ *Confidentiality:* On any voluntary adoption, the parents' identity can be concealed from everyone but those official handling the adoption, including tribal officials.
- ◆ *Return upon Demand:* In voluntary placements, the parent or custodian is entitled to the return of the child on demand. In a voluntary adoption, the parent can seek the return of the child until the adoption decree is final.

### Rights of Tribes

- ◆ *Full participation in proceedings:* A tribe may intervene at any point in the proceedings, present testimony, cross-examine witnesses and have access to records.
- ◆ *Licensing Indian adoptive or foster homes:* A tribe may establish and operate a licensing system to regulate foster and adoptive homes.
- ◆ *Transfer to tribal court:* A tribe may request transfer of a child custody or adoption proceeding from the state or county court to tribal court.

### Indian Foster Home Recruitment

Foster parenting is an old concept for the Indian Community. Generations ago, Indian families were foster parents -- they were simply called "extended family." Without the extended family, we could not have maintained our valuable Indian traditions. Providing foster care can be a fulfilling and meaningful family experience. ICFPP recruits Indian foster parents so homes are available for the placement of Indian children under the ICWA. Recruitment services include payment of application fees, assistance with the completion of paperwork and the interface with the county licensing department to reduce the stressful impact of opening ones home to county workers. ICFPP provides support for the many demands of foster parenting such as transporting the child to regular medical, dental or therapy appointments. ICFPP also assists with supervising visits with the child's natural parents and provides quarterly foster parent training.

